

## **Senate Bill No. 1970**

### **CHAPTER 806**

An act to amend Sections 2181, 2182, 12976, 12999.4, 12999.5, 14008, and 14033 of, and to add and repeal Section 12999.6 of, the Food and Agricultural Code, relating to economic poisons.

[Approved by Governor September 28, 2000. Filed  
with Secretary of State September 28, 2000.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

SB 1970, Costa. Economic poisons: regulation.

(1) Existing law provides for presentation of evidence to the Director of the Department of Food and Agriculture, for purposes of convening a hearing by a trial board in regard to the neglect, incompetence, or misconduct in office of a county agricultural commissioner, as specified.

This bill would, instead, authorize presentation of the evidence to the Secretary of Food and Agriculture or the Director of the Department of Pesticide Regulation, for the above-specified conduct. The secretary would be authorized to convene the trial board when the alleged offenses come under the jurisdiction of the Department of Food and Agriculture and the director would convene the trial board when the alleged offenses come under the jurisdiction of the Department of Pesticide Regulation.

(2) Existing law provides that, except as provided, the director may, after investigation and hearing, adopt regulations to govern the possession, sale, or use of any pesticide which the director finds necessary, as specified.

This bill would revise procedures relating to adopting regulations.

(3) Existing law authorizes the levy of civil penalties for specified violations and provides the person charged with a violation with the opportunity to review the director's evidence and present evidence on his or her behalf at the hearing.

This bill would revise this procedure by authorizing the person to review the evidence prior to the hearing.

(4) Existing law provides for the levying of civil penalties for specified violations regarding pesticides. Those penalties are imposed by a county agricultural commissioner after a hearing by that commissioner.

This bill would provide that it is unlawful to refuse or neglect to pay a civil penalty levied as described above.

Additionally, this bill would authorize the director to initiate and maintain enforcement actions for violations committed in multiple jurisdictions or in other specified cases, or to refer those violations to

the district attorney or the Attorney General. In cases where the director takes enforcement action, the director would be authorized to impose a fine up to \$5,000 for each violation after a noticed hearing. Procedures for judicial review of the director's decision would also be provided. The director's authority under these provisions would only apply prospectively to violations occurring on or after January 1, 2001, and would only remain in effect until January 1, 2006, unless a later enacted statute deletes or extends that date.

(5) Existing law provides for the refusal, revocation, or suspension of a permit regarding the use of pesticides for specified violations.

This bill would, in addition, provide for the refusal, revocation, or suspension of a permit regarding the use of pesticides, as specified, for the failure to pay a civil penalty or comply with a final, lawful order from an agricultural commissioner.

*The people of the State of California do enact as follows:*

SECTION 1. Section 2181 of the Food and Agricultural Code is amended to read:

2181. Upon satisfactory evidence presented to the Secretary or the Director of the Department of Pesticide Regulation that the commissioner of any county is guilty of neglect of duty, incompetence, or misconduct in office, the trial board that is selected, pursuant to this article, shall hold a hearing at the time and place specified by the trial board. The secretary shall convene the trial board when the alleged offenses come under the jurisdiction of the Department of Food and Agriculture, and the director shall convene the trial board when the alleged offenses come under the jurisdiction of the Department of Pesticide Regulation.

SEC. 2. Section 2182 of the Food and Agricultural Code is amended to read:

2182. The county agricultural commissioner's trial board shall be composed of the Secretary and the Director of the Department of Pesticide Regulation, a person who has knowledge of, or experience in, agriculture, selected by the board of supervisors of the county of the charged commissioner, and a hearing officer from the Office of Administrative Hearings, who shall be chairman and a voting member of such board.

The department that convenes the trial board is responsible, under Section 11370.4 of the Government Code, for the cost of the services provided for by the Office of Administrative Hearings in carrying out the provisions of this section.

SEC. 3. Section 12976 of the Food and Agricultural Code is amended to read:

12976. The director may adopt regulations to govern the possession, sale, or use of any pesticide which the director finds

necessary to carry out the purposes of Division 6 (commencing with Section 11401) or this division.

SEC. 4. Section 12999.4 of the Food and Agricultural Code is amended to read:

12999.4. (a) In lieu of civil prosecution by the director, the director may levy a civil penalty against a person violating Sections 12115, 12116, 12671, 12992, 12993, Chapter 10 (commencing with Section 12400) of Division 6, Article 4.5 (commencing with Section 12841), Chapter 7.5 (commencing with Section 15300), or the regulations adopted pursuant to those provisions, of not more than five thousand dollars (\$5,000) for each violation.

(b) Before a civil penalty is levied, the person charged with the violation shall be given a written notice of the proposed action, including the nature of the violation and the amount of the proposed penalty, and shall have the right to request a hearing within 20 days after receiving notice of the proposed action. A notice of the proposed action that is sent by certified mail to the last known address of the person charged shall be considered received even if delivery is refused or the notice is not accepted at that address. If a hearing is requested, notice of the time and place of the hearing shall be given at least 10 days before the date set for the hearing. Prior to the hearing, the person shall be given an opportunity to review the director's evidence. At the hearing, the person shall be given the opportunity to present evidence on his or her own behalf. If a hearing is not timely requested, the director may take the action proposed without a hearing.

(c) If the person against whom the director levied a civil penalty requested and appeared at a hearing, the person may seek review of the director's decision within 30 days of the date of the decision pursuant to Section 1094.5 of the Code of Civil Procedure.

(d) After the exhaustion of the review procedure provided in this section, the director, or his or her representative, may file a certified copy of a final decision of the director that directs the payment of a civil penalty and, if applicable, any order that denies a petition for a writ of administrative mandamus, with the clerk of the superior court of any county. Judgment shall be entered immediately by the clerk in conformity with the decision or order. No fees shall be charged by the clerk of the superior court for the performance of any official service required in connection with the entry of judgment pursuant to this section.

(e) Any money recovered under this section shall be paid into the Department of Pesticide Regulation Fund for use by the department, upon appropriation, in administering this division and Division 6 (commencing with Section 11401).

SEC. 5. Section 12999.5 of the Food and Agricultural Code is amended to read:

12999.5. (a) In lieu of civil prosecution by the director, the commissioner may levy a civil penalty against a person violating Division 6 (commencing with Section 11401), Article 10 (commencing with Section 12971) or Article 10.5 (commencing with Section 12980) of this chapter, Section 12995, Article 1 (commencing with Section 14001) of Chapter 3, Chapter 7.5 (commencing with Section 15300), or a regulation adopted pursuant to any of these provisions, of not more than one thousand dollars (\$1,000) for each violation. It is unlawful and grounds for denial of a permit under Section 14008 for any person to refuse or neglect to pay a civil penalty levied pursuant to this section once the order is final.

(b) Before a civil penalty is levied, the person charged with the violation shall be given a written notice of the proposed action including the nature of the violation and the amount of the proposed penalty, and shall have the right to request a hearing within 20 days after receiving notice of the proposed action. A notice of the proposed action that is sent by certified mail to the last known address of the person charged shall be considered received even if delivery is refused or the notice is not accepted at that address. If a hearing is requested, notice of the time and place of the hearing shall be given at least 10 days before the date set for the hearing. At the hearing, the person shall be given an opportunity to review the commissioner's evidence and to present evidence on his or her own behalf. If a hearing is not timely requested, the commissioner may take the action proposed without a hearing.

(c) If the person upon whom the commissioner levied a civil penalty requested and appeared at a hearing, the person may appeal the commissioner's decision to the director within 30 days of the date of receiving a copy of the commissioner's decision. The following procedures apply to the appeal:

(1) The appeal shall be in writing and signed by the appellant or his or her authorized agent, state the grounds for the appeal, and include a copy of the commissioner's decision. The appellant shall file a copy of the appeal with the commissioner at the same time it is filed with the director.

(2) The appellant and the commissioner may, at the time of filing the appeal or within 10 days thereafter or at a later time prescribed by the director, present the record of the hearing including written evidence that was submitted at the hearing and a written argument to the director stating grounds for affirming, modifying, or reversing the commissioner's decision.

(3) The director may grant oral arguments upon application made at the time written arguments are filed.

(4) If an application to present an oral argument is granted, written notice of the time and place for the oral argument shall be given at least 10 days before the date set therefor. The times may be

altered by mutual agreement of the appellant, the commissioner, and the director.

(5) The director shall decide the appeal on the record of the hearing, including the written evidence and the written argument described in paragraph (2), that he or she has received. If the director finds substantial evidence in the record to support the commissioner's decision, the director shall affirm the decision.

(6) The director shall render a written decision within 45 days of the date of appeal or within 15 days of the date of oral arguments or as soon thereafter as practical.

(7) On an appeal pursuant to this section, the director may affirm the commissioner's decision, modify the commissioner's decision by reducing or increasing the amount of the penalty levied so that it is within the director's guidelines for imposing civil penalties, or reverse the commissioner's decision. Any civil penalty increased by the director shall not be higher than that proposed in the commissioner's notice of proposed action given pursuant to subdivision (b). A copy of the director's decision shall be delivered or mailed to the appellant and the commissioner.

(8) Any person who does not request a hearing pursuant to subdivision (b) may not file an appeal pursuant to this subdivision.

(9) Review of a decision of the director may be sought by the appellant within 30 days of the date of the decision pursuant to Section 1094.5 of the Code of Civil Procedure.

(d) The commissioner may levy a civil penalty pursuant to subdivisions (a) to (c), inclusive, against a person violating paragraph (1), (2), or (8) of subdivision (a) of Section 1695 of the Labor Code, which pertains to registration with the commissioner, carrying proof of that registration, and filing changes of address with the commissioner.

(e) After the exhaustion of the appeal and review procedures provided in this section, the commissioner or his or her representative, may file a certified copy of a final decision of the commissioner that directs the payment of a civil penalty and, if applicable, a copy of any decision of the director or his or her authorized representative rendered on an appeal from the commissioner's decision and a copy of any order that denies a petition for a writ of administrative mandamus, with the clerk of the superior court of any county. Judgment shall be entered immediately by the clerk in conformity with the decision or order. No fees shall be charged by the clerk of the superior court for the performance of any official service required in connection with the entry of judgment pursuant to this section.

SEC. 6. Section 12999.6 is added to the Food and Agricultural Code, to read:

12999.6. (a) The director may initiate and maintain enforcement actions for violations described in subdivision (b) and to impose the

fine described in subdivision (b), or may refer any of those violations to the proper enforcement agency, including the district attorney in the county where the violations have occurred or the Attorney General.

(b) If the director determines that violations of statutes as defined in Section 12999.5, committed in multiple jurisdictions are not appropriate matters to be enforced by a commissioner, or in the case of priority investigations, as defined in the 1995 Cooperative Agreement or subsequent modifications to that agreement between the California Department of Pesticide Regulation, the California Agricultural Commissioners and Sealers Association, and the United States Environmental Protection Agency, Region IX, the director may take the appropriate action. The director may levy a penalty of not more than five thousand dollars (\$5,000) for each violation. The department may adopt regulations to enforce this section.

(c) Before a civil penalty is levied, the person charged with the violation shall be given a written notice of the proposed action, including the nature of the violation and the amount of the proposed penalty, and shall have the right to request a hearing within 20 days after receiving notice of the proposed action. A notice of the proposed action that is sent by certified mail to the last known address of the person charged shall be considered received even if delivery is refused or the notice is not accepted at that address. If a hearing is requested, notice of the time and place of the hearing shall be given at least 10 days before the date set for the hearing. Prior to the hearing, the person shall be given an opportunity to review the director's evidence. At the hearing the person shall be given the opportunity to present evidence on his or her own behalf. If a hearing is not timely requested, the director may take the action proposed without a hearing.

(d) If the person against whom the director levied a civil penalty requested and appeared at a hearing, the person may seek judicial review of the director's decision within 30 days of the date of the decision pursuant to Section 1094.5 of the Code of Civil Procedure.

(e) After exhaustion of the review procedure provided in this section, the director, or his or her representative, may file a certified copy of a final decision of the director that directs the payment of a civil penalty and, if applicable, any order that denies a petition for writ of administrative mandamus, with the clerk of the superior court of any county. Judgment shall be entered immediately by the clerk in conformity with the decision or order. No fees shall be charged by the clerk of the superior court for the performance of any official service required in connection with the entry of judgment pursuant to this section.

(f) Any money recovered under this section shall be paid into the Department of Pesticide Regulation Fund for use by the department,

upon appropriation, in administering this division and Division 6 (commencing with Section 11401).

(g) This section shall only apply to violations that occur on or after January 1, 2001.

(h) This section shall remain in effect only until January 2, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date.

SEC. 7. Section 14008 of the Food and Agricultural Code is amended to read:

14008. Any permit may be refused, revoked, or suspended for violation of any of the conditions of the permit, or of a previous permit, or for violation of any provision of this division or of the regulations that are issued pursuant to it, or for the failure to pay a civil penalty or comply with any lawful order of the commissioner, once that order is final.

SEC. 8. Section 14033 of the Food and Agricultural Code is amended to read:

14033. The director shall adopt regulations that govern the use of 2,4-D and any other herbicide which he finds and determines is injurious to any crop that is being grown in any area of the state. The regulations of the director may prescribe the time when, and the conditions under which, a restricted herbicide may be used in different areas of the state. They may provide that a restricted herbicide shall be used only under permit of the commissioner or under the direct supervision of the commissioner, subject to any of the following limitations:

- (a) In certain areas.
- (b) In excess of certain quantities or concentrations.

